

Message Text

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E.O. 11652: GDS

TAGS: PGOV, BW, GW

SUBJECT: ABORTION LAW - DRAFT BK/O

REF: USBERLIN 217

SUMMARY: FRENCH, ON BASIS OF INSTRUCTIONS FROM PARIS, HAVE FUNDAMENTAL PROBLEMS WITH COURSE OF ACTION IN ABORTION LAW/FCC DECISION MATTER WHICH IS OUTLINED REFTEL. END SUMMARY.

1. ON FEBRUARY 7, FRENCH EMBASSY REPRESENTATIVE (DE BOISSIEU) DISCUSSED WITH EMBASSY OFFICERS THE DRAFT BK/O WITH AMENDMENTS PROPOSED REFTEL. ON THE BASIS OF INSTRUCTIONS HE INDICATED THAT FRENCH HAD FOLLOWING DIFFICULTIES WITH COURSE OF ACTION PROPOSED BY BERLIN MISSIONS:

A. QUESTIONABLE PROPRIETY OF AUTHORIZING, ORDERING OR EVEN INVITING SENAT BY ALLIED BK/O TO OPOSE SPECIFIC COURSE OF ACTION BY BERLIN HOUSE OF REPRESENTATIVES. FRENCH REP INDICATED SUCH ORDER OR PROPOSAL WOULD INTERFERE WITH CONSTITUTIONAL FUNCTIONS DELEGATED TO HOUSE OF REPRESENTATIVES AND WOULD UNNECESSARILY SUGGEST THAT HOUSE OF REPRESENTATIVES IS ALTER EGO OF BUNDESTAG. BOISSIEU NOTED THAT PRIOR

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SUGGESTION BY ALLIES REGARDING BERLIN LEGISLATION IS

QUITE DIFFERENT MATTER FROM AFTER-THE-FACT REVIEW.

B. TERM "A JUDICIAL DECISION HAVING GENERAL LEGAL FORCE IN THE FEDERAL REPUBLIC," USED IN A PUBLISHED ORDER, WOULD BE TRANSPARENT REFERENCE TO WHAT CAN ONLY BE A DECISION OF FRG FEDERAL CONSTITUTIONAL COURT (FCC), AND WOULD RUN GREAT RISK OF SOVIET PROTEST.

C. ABSENCE OF NECESSITY, IN CONNECTION WITH THE FIRST INSTANCE IN DECADES, TO REGULATE A VERY RARE AND PROVIDING FOR A GENERAL PROCEDURE HAVING THE DISADVANTAGES OF A AND B, ABOVE.

D. FRENCH REPRESENTATIVE ALSO QUESTIONED THE NEED FOR ALLIES TO REFER TO "MAINTAINING LEGAL HARMONY WITH THE FEDERAL REPUBLIC" WHICH APPEARED TO PUT ALLIES OUT FRONT IN SOLVING PROBLEM WHICH IS ESSENTIALLY A GERMAN ONE. SUCH LANGUAGE, BOISSIEU INDICATED, WOULD GO FAR BEYOND THAT OF 1952 HIGH COMMISSION'S LETTER AND OF 1955 BERLIN DECLARATION.

2. IN MAKING ABOVE POINTS FRENCH REP, RELYING ON INSTRUCTIONS, MADE CLEAR THAT LANGUAGE PROPOSED REFTTEL WAS A "NON-STARTER" IN FRENCH EYES, AND SUGGESTED POSSIBILITY OF EMPLOYING BK/L FOR RESPONDING TO SENAT REQUEST FOR ALLIED ACTION CONCERNING GENERAL PROBLEM. WITH RESPECT TO SPECIFIC PROBLEMS POSED BY ABORTION LAW, FRENCH REP SUGGESTED BK/L BY WHICH ALLIES WOULD INDICATE ABSENCE OF OBJECTION TO ADOPTION OF ABORTION LAW IN BERLIN WITHOUT SECTION 2 (OR OTHERWISE CHANGED IN MANNER TO COPE WITH EFFECT OF FEBRUARY 25 FCC DECISION). SUCH A BK/L, HE BELIEVED, WOULD ESTABLISH A PROCEDURE FOR DEALING WITH ANY FUTURE SIMILAR SITUATIONS IN AN ADEQUATE MANNER (PROBLEM IS, BOISSIEU EMPHASIZED, A VERY RARE ONE) AND ONE WITHOUT DISADVANTAGES OF A AND B, ABOVE.

3. EMBASSY REPRESENTATIVE STATED THAT POSSIBILITY OF SOVIET REACTION TO PROPOSED BK/O DID NOT SEEM TO BE NEARLY AS GREAT AS FRENCH THOUGHT. SOVIET WOULD PROBABLY FIND AN ASSERTION OF ALLIED AUTHORITY MUCH TO THEIR LIKING. FACT OF BERLIN ACTION INTERPOSED
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BETWEEN ANY FCC DECISION AND IMPLEMENTATION OF RESULT IN WSB WOULD SEEM TO PROVIDE SUFFICIENT INSULATION IN SITUATION SO SOVIETS WOULD REALLY HAVE NO BASIS TO COMPLAIN AND, IF THEY DID SO, WOULD BE COMPLAINING ACTUALLY FOR OTHER REASONS. EMBASSY REPS THEN TOLD BOISSIEU THAT, SINCE PARIS HAS NOW ISSUED INSTRUCTIONS ON MATTER, FURTHER DISCUSSIONS ON FORM, SCOPE AND CONTENT OF ALLIED ACTION COULD BEST BE HELD TRIPARTITELY

IN BERLIN. AGREEMENT WAS REACHED FOR EACH TO REPORT,
WITH NEXT DISCUSSION ON SUBJECT TO BE AMONG BERLIN
MISSIONS.
HILLENBRAND

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